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Before the
FEDERAL COMMUNICATIONS COMMISSION

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MAY - 3 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF CITIZENS UTILITIES COMPANY

Citizens Utilities Company, on behalf of itself and its telecommunications divisions and subsidiaries (hereinafter referred to, collectively, as the "Citizens Companies"), by its attorney, hereby submits its reply comments^{1/} in response to comments solicited by the Notice of Proposed Rulemaking, released on March 25, 1996 initiating the above-styled proceeding (the "NPRM"), and shows as follows:

I. Introduction

A. The Citizens Companies

Citizens Utilities Company, through divisions and subsidiaries, provides telecommunications services, electric distribution, natural gas transmission and distribution and water and waste water treatment services to more than 1,600,000 customer connections in 20 states. The Citizens Companies' Telecommunications Sector, provides local exchange telephone services in suburban and rural exchange areas in Arizona, California, Idaho, Montana, Nevada, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Utah and West Virginia. In addition, Citizens Telecommunications Company, a Citizens' subsidiary, provides interexchange services throughout the nation. Finally, another Citizens' subsidiary, Electric Lightwave, Inc., provides competitive

^{1/} The Citizens Companies did not file initial comments in this proceeding.

local exchange and interexchange services in several Far Western states.

B. The Interest of the Citizens Companies in this Proceeding

The Citizens Companies fully embrace elimination of tariffing of rates and charges of nondominant interexchange carriers. However, serious consideration must be given to a down side to mandatory detariffing for all purposes -- elimination of the historic contract existing between carriers and their carriers. Accordingly, the Citizens Companies believe that permissive tariffing of non-rate terms should be allowed.

II. Permissive Tariffing of Carrier Service Terms and Conditions Should Be Allowed

The Citizens Companies believe that mandatory detariffing could have an unintended and adverse consequence. On the one hand, the Citizens Companies fully believe, for all of the reasons expressed in the *NPRM* and by the commenters supporting the proposal, that no justification exists for continued filing of nondominant interexchange carrier rates and charges. On the other hand, tariffs have historically constituted the fundamental contract between carriers and their customers. Mandatory elimination of tariffing for all purposes could work a hardship on both carriers and the public they serve in that no written contract would exist between the parties on the effective date of tariff elimination. For the reasons set forth herein, forbearance should be mandatory for rates and charges, but affected carriers should be allowed, if they choose, to file tariffs containing the terms and conditions of their service offerings.

A contract between carriers and their customers is mandatory for the simplest of reasons -- to define the relationship between the parties and to allocate the risks inherent in that relationship. In the view of the Citizens Companies, perhaps the most important function of the historic tariff/contract has been to limit the tort liability of common carriers for errors in transmission,

misdelivery of messages, etc. The traditional tariff process eliminated the need for carriers serving large numbers of customers to enter into cumbersome individual contracts with each customer. Mandatory elimination of tariffs for every purpose would present interexchange carriers like Citizens Telecommunications Company that primarily serve small business and residential customers, with a burdensome, and probably insurmountable, logistics problem in attempting to enter into the individual customer contracts. In addition to just the vast number of contracts that would be necessary, each individual customer contract would, of necessity, be lengthy and cumbersome in order to incorporate the material terms and conditions provisions now contained in tariffs.

Rather than eliminating tariffs for every purpose, the appropriate course of action is to eliminate tariffing of rates and charges, but to allow carriers that so elect to maintain "terms and conditions" tariffs that continue to have the force of a contract between carriers and their customers. This proposition is in the public interest in that it will save carriers the expense of assuming the burden of attempting to secure written contracts with each customer. This expense is presently incalculable, but the Citizens Companies expect that it will be extremely high and could result in higher rates to the public.

The limited, permissive tariff filing proposed by the Citizens Companies reflects the reality that existed during the prior, permissive detariffing regime prevailing at the Commission. During that era, many nondominant interexchange carriers continued to file tariffs. The Citizens Companies believe that the principal reason why carriers continued to file tariffs when they were not otherwise required to do so was to preserve the fundamental contractual relationship with customers in the least intrusive and costly way possible. Carriers should be allowed the same option if and when the

Commission reimplements detariffing, at least to the extent that non-rate terms and conditions are concerned.

Respectfully submitted,

CITIZENS UTILITIES COMPANY

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Dated: May 3, 1996

CERTIFICATE OF SERVICE

I, Dawn Brodus-Yougha, do hereby certify that copies of the foregoing "Reply
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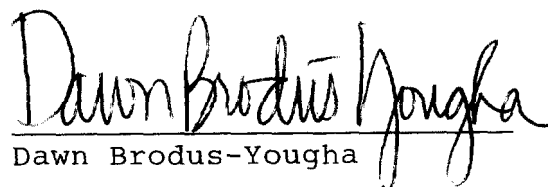
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